

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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GREGORY CASH AND CLARA CASH :  
AND GREGORY B. WAHOFF AND :  
PHILLIP GARCIA AND ROCKY :  
WAYNE ADKISSON, :  
Plaintiffs, :  
-vs- : C-1-01-753  
HAMILTON COUNTY DEPARTMENT :  
OF ADULT PROBATION AND :  
MICHAEL WALTON AND CITY OF :  
CINCINNATI, :  
Defendants. :

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Deposition of JEFFREY A. SMITH a Witness  
herein, taken by the Defendants as upon direct  
examination and pursuant to the Federal Rules of  
Civil Procedure as to the time and place and  
stipulations hereinafter set forth, at the offices  
of Hamilton County Prosecutor's Office, 230 East  
Ninth Street, Cincinnati, Ohio, at 9:30 a.m. on  
Wednesday, June 7, 2006, before Lisa K. Keller, a  
Registered Professional Reporter and Notary Public  
within and for the State of Ohio.

\* \* \* \* \*



1       APPEARANCES:

2       ON BEHALF OF PLAINTIFFS

3               Mr. Stephen Felson  
4               Attorney at Law  
5               CBLD Center  
6               Suite 1650  
7               36 East Seventh Street  
8               Cincinnati, Ohio 45202

9       ON BEHALF OF DEFENDANTS

10              Mr. Rick Ganulin  
11              Attorney at Law  
12              801 Plum Street  
13              Cincinnati, Ohio 45202

14              Mr. David T. Stephenson  
15              Attorney at Law  
16              Assistant Prosecuting Attorney  
17              230 East Ninth Street  
18              Suite 4000  
19              Cincinnati, Ohio 45202

20       ALSO PRESENT

21              Ms. Amy Diers

22                               \*    \*    \*    \*    \*    \*

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1       WHEREUPON:

2                               JEFFREY A. SMITH,  
3       of lawful age, a witness herein, being first duly  
4       sworn as hereinafter certified, testified as  
5       follows:

6                               DIRECT EXAMINATION

7       BY MR. GANULIN:

8                       Q.    Good morning, Mr. Smith. Please state  
9       your full name and address.

10                   A.   Jeffery A. Smith, 800 Broadway,  
11       Cincinnati, Ohio, 45202.

12                   Q.    And you previously gave deposition  
13       testimony in this case; is that correct?

14                   A.    Yes, sir.

15                   Q.    You were formerly employed as a field  
16       supervisor for the Hamilton County Adult Probation  
17       Department; is that correct?

18                   A.    Yes, sir. I still am.

19                   Q.    You're still employed in that capacity?

20                   A.    Yes, sir.

21                   Q.    Would you describe -- and when did you  
22       assume those responsibilities, about?

23                   A.    13, 14, 15 years ago. I don't know the  
24       exact date. I was part-time at the time.

25                   Q.    And you have managerial

1 responsibilities to oversee probationers?

2 A. Yes, sir, I do.

3 Q. First of all, what's a probationer?

4 A. A probationer is a person directed by  
5 the Court to do community service that goes out on  
6 detail.

7 Q. And are your responsibilities to  
8 oversee the probationers doing their work?

9 A. To oversee the probationers, see that  
10 they do their job responsibly, and to maintain a  
11 good working order with the probationers and  
12 hopefully no one will get hurt.

13 Q. Are you on a job site with them?

14 A. Yes.

15 Q. You make sure they do their job?

16 A. Yes, as directed.

17 Q. Who do you report to in the  
18 organization?

19 A. Mr. Rajagopal, director of community  
20 service.

21 Q. Spell that for the reporter.

22 A. R-A-J.

23 MR. STEVENSON: He's going to be  
24 here. His first in his P-A-K-K-I-R-I, and last  
25 name R-A-J-A-G-O-P-A-L.

1 BY MR. GANULIN:

2 Q. And do you know who he reports to?

3 A. The assistant chief of the department.

4 Q. And that's the Hamilton County Adult  
5 Probation Department?

6 A. Yes.

7 Q. And that person reports to the chief, I  
8 assume?

9 A. I assume also.

10 Q. And do you know who the chief of the  
11 Probation Department reports to?

12 A. I have no clue. I don't know. My  
13 assumption would be the judges who govern our body,  
14 our division.

15 Q. Perhaps the Hamilton County  
16 administrator?

17 MR. STEVENSON: Rick --

18 THE WITNESS: I don't know.

19 MR. FELSON: That's a good enough  
20 answer, if he doesn't know.

21 MR. GANULIN: That's fine. We'll  
22 clear that up.

23 BY MR. GANULIN:

24 Q. I assume each department within the  
25 Hamilton County government is managed by the

1 administrator of Hamilton County; do you know?

2 A. I don't know.

3 Q. If you don't know, that's fine.

4 A. I don't know.

5 Q. Now, you previously testified, if you  
6 remember, that you were at the site of a cleanup in  
7 October of 2001 underneath the Fifth Street viaduct  
8 west of Central Avenue. Do you remember being at  
9 that site in October of 2001?

10 A. I remember the site, but I don't  
11 remember the exact date.

12 Q. But you remember being there because  
13 you brought a group of probationers there to do a  
14 cleanup?

15 A. Yes.

16 Q. Do you remember who directed you to  
17 bring the probationers to that site?

18 A. No, I do not.

19 Q. Do you remember your testimony when you  
20 were deposed in February of 2002 concerning that  
21 issue?

22 A. No, I do not remember what I said.

23 Q. And today you don't remember who  
24 directed you to bring the probationers to that  
25 site?

1 A. No, I do not.

2 Q. That site was underneath an interstate  
3 highway; is that correct?

4 A. Yes.

5 Q. Do you know if that was State of Ohio  
6 property?

7 A. I do not.

8 Q. You do not know?

9 A. I do not know.

10 Q. Do you remember approximately how often  
11 you were directed to bring probationers to sites  
12 for cleanup activities?

13 A. Honestly, no. Not very often, not many  
14 times at all.

15 Q. That was the only time, in fact, in  
16 2001, is that correct, that you were directed to  
17 bring --

18 A. It could be. I don't remember.

19 Q. In 2001 you had been on the job for  
20 perhaps about ten years?

21 A. Ten years, I believe.

22 Q. Roughly how many times during those ten  
23 years, more or less, were you directed to bring  
24 probationers to sites?

25 A. Several times. I don't remember the



1 exact number.

2 MR. FELSON: I'm going to object  
3 or ask for clarification. When you say sites, all  
4 sites? Homeless sites? City sites? County sites?

5 MR. GANULIN: Any site within the  
6 City of Cincinnati, whether it was State of Ohio  
7 property or City of Cincinnati property or any  
8 other property. How many times were you --

9 THE WITNESS: I don't remember the  
10 exact number, but several over the years.

11 BY MR. GANULIN:

12 Q. Just so we're clear, over a period of  
13 about ten years, several times?

14 A. Yes.

15 Q. Do you recall if you were ever  
16 contacted directly by any City of Cincinnati  
17 employee to bring probationers to a site?

18 A. Not that I'm aware of.

19 Q. Your testimony today is that you don't  
20 recall ever being contacted by a City of Cincinnati  
21 employee directly to bring probationers --

22 A. No, sir.

23 Q. And so as far as you recall, would you  
24 have been directed by one of your superiors of the  
25 organization where you needed to be on a certain

1 day?

2 A. Yes.

3 Q. That's the normal -- today for  
4 instance, if you need to bring a group of  
5 probationers to a site, would you be directed by  
6 one of your superiors in the organization to bring  
7 those probationers to that site?

8 A. Yes, Raj, yes.

9 Q. And although you don't remember  
10 specifically you said, in October of 2001, it's  
11 likely that if you were directed to bring  
12 probationers to a site, it would have been by a  
13 superior in your organization?

14 A. As far as I -- yes.

15 Q. To the extent you may have testified in  
16 your earlier deposition that you assumed or knew  
17 that a Cincinnati Policeman contacted to you to  
18 bring probationers to that site -- strike all that.

19 In October of 2001 when you  
20 brought the probationers to the site, when you  
21 brought the probationer to the site underneath the  
22 Fifth Street viaduct west of Central Avenue, did  
23 you go down to the site to manage their work?

24 A. I took the probationers to the site and  
25 then the policeman directed them what to do.

1           Q.   Were you there when the -- which  
2 policeman was that?

3           A.   I believe it was Branigan.

4           Q.   Do you remember if he was there when  
5 you arrived or did he arrive after you?

6           A.   I believe we followed him to different  
7 sites, Officer Branigan.

8           Q.   On that day?

9           A.   I believe so. I don't remember sitting  
10 here talking about it now in the deposition, but I  
11 don't remember if we went to other sites or not,  
12 but we were under the policeman's directive.

13          Q.   That's my question. You spoke to him  
14 when you arrived at the site? Do you remember?

15          A.   No, I do not.

16          Q.   When you say he directed the  
17 probationers, were you there to hear him direct the  
18 probationers?

19          A.   I don't remember. I do not remember.

20          Q.   I'm just trying to determine the basis  
21 for your assertion before that the probationers  
22 were directed by a Cincinnati policeman, in this  
23 case you're saying Police Officer Branigan --

24          A.   I believe it was Branigan. I wouldn't  
25 swear to it.

1           Q.   How do you know that he directed them  
2   if you weren't there to hear him direct?

3                   MR. FELSON:   Objection.   He said  
4   he can't remember if he was there to hear him, not  
5   that he wasn't there.

6                   MR. STEVENSON:   Go ahead and  
7   answer, if you can.

8                   THE WITNESS:   What was the  
9   question again?

10          BY MR. GANULIN:

11               Q.   How do you know that Policeman Branigan  
12   directed the probationers, if you were not there to  
13   hear him direct?

14               A.   Because I told the probationers do  
15   whatever the police officer tells them to do.

16               Q.   How far away from the cleanup site were  
17   you that day?

18               A.   I was obviously right there with the  
19   probationers at the scene, at the site.

20               Q.   You weren't sitting in a vehicle  
21   removed from the site?

22               A.   No, no, I was on the site.

23               Q.   Were you standing there on the site  
24   with the probationers?

25               A.   I probably was sitting in the van

1 watching them.

2 Q. So was the van --

3 A. On the site, the vehicle was on the  
4 site of the cleanup.

5 Q. And did you observe the probationers  
6 working?

7 A. Yes.

8 Q. Do you remember seeing anything that  
9 was not trash at the site?

10 A. No, sir.

11 Q. So, as far as you were aware, when you  
12 were there at the time, the probationers were just  
13 cleaning up a site filled with trash?

14 A. Correct.

15 Q. Assuming there was something of value  
16 at the site, I don't know what in your experience  
17 you ran across that might have value at a site like  
18 that, but let's say there was a tent pitched at the  
19 site, would you save a tent that was at the site or  
20 would you throw it away?

21 A. Personally would I throw it away? No.

22 Q. Would you make sure your probationers  
23 did not throw it away?

24 A. I couldn't tell you if they did or  
25 didn't. I cannot remember.

1 MR. STEVENSON: Jeff, listen to  
2 the question that's being asked.

3 BY MR. GANULIN:

4 Q. At this point generally in fulfilling  
5 your responsibilities to manage a group of  
6 probationers cleaning up any site, if you were  
7 there and saw an object of value --

8 A. No, I would not have them throw it  
9 away, no.

10 Q. Did you ever have any conversations  
11 with any city official from a City Council member  
12 from the City Manager on down through all the city  
13 employees, did you have any conversation with any  
14 city official or employee about how your  
15 probationers clean up sites?

16 A. Not that I remember, no.

17 Q. Are you aware of any city ordinance or  
18 other city policy, City of Cincinnati ordinance or  
19 policy or any other rule or regulation of the City  
20 of Cincinnati procedure that controls the cleanup  
21 of sites like this?

22 A. No, I am not.

23 Q. Are you aware of any occasions in the  
24 context of your fulfilling your responsibilities  
25 where, and I'm speaking about prior to October of

1       2001, any occasions where people had complained  
2       about objects of value being thrown away when your  
3       probationers cleaned up sites?

4               A.   No, I am not.

5               Q.   You previously testified that before a  
6       cleanup of one of these sites occurred, that  
7       Cincinnati policemen would give notice to people  
8       present at the site and give them an opportunity to  
9       remove whatever they wanted to; is that correct?

10              A.   If that's what I stated, I'm sure it  
11       was. I don't remember at this time.

12              Q.   You don't remember whether anybody in  
13       the employ of the State of Ohio from the Ohio  
14       Department of Transportation or any other  
15       department or division of the State of Ohio  
16       communicated with Hamilton County to arrange for  
17       the cleanup of this particular site that we're  
18       discussing today which is underneath the Fifth  
19       Street viaduct west of Central?

20              A.   No, sir, I would not.

21              Q.   You're aware, I believe, that Hamilton  
22       County had a contract with the State of Ohio to  
23       clean up the State of Ohio property and Hamilton  
24       County had a separate contract with the City of  
25       Cincinnati to clean up City of Cincinnati property;

1 is that correct?

2 A. I know they had some contracts  
3 fulfilling those two organizations or working with  
4 the two organizations.

5 MR. GANULIN: That's all I have.

6 CROSS EXAMINATION

7 BY MR. FELSON:

8 Q. Mr. Smith, I'm Steve Felson for the  
9 Plaintiffs. A few extra questions here. You  
10 mentioned that you were called several times in the  
11 course of your service here doing these cleanup  
12 sweeps. Are those the words you used, correct?

13 A. I don't remember the exact words I  
14 used, but we have done it several times to help.

15 Q. Okay. Are you -- were any of the  
16 sweeps that you -- we've defined homeless sweeps in  
17 this litigation because homeless -- the people who  
18 are Plaintiffs in this case were sleeping under  
19 some of these -- on some of these sites, as you may  
20 recall that from talking to your attorney or from  
21 your prior knowledge. We define homeless sweeps as  
22 cleanup operations in places where homeless people  
23 are spending the night. Just so when I use that  
24 term, that's what we're talking about. Okay?

25 A. Okay.



1           Q. Now, do you recall knowing that there  
2           were homeless people sleeping in some of these  
3           sites, correct?

4           A. I --

5           Q. Put it this way, have you ever run into  
6           sites in the City of Cincinnati where homeless  
7           people were sleeping?

8           A. Yes.

9           Q. You've actually seen that; haven't you?

10          A. On occasion.

11          Q. Okay. Have you ever brought  
12          probationers to clean up sites where -- to clean up  
13          homeless sites as I've defined it?

14          A. Individually by myself?

15          Q. Yeah.

16          A. Without the --

17          Q. No, no. Have you ever participated in  
18          any cleanup of homeless sites? That's my question.  
19          Is that ambiguous?

20                   MR. STEVENSON: No, I want to make  
21          sure he understands what you're driving at, but I  
22          think that last question should do it. If you can  
23          read that back.

24                   (The requested portion was read  
25          back.)

1 THE WITNESS: Yes.

2 BY MR. FELSON:

3 Q. And I'm saying this because the word  
4 sites was used earlier by Mr. Ganulin and I asked  
5 him to clarify that, but he stuck with the word  
6 sites and I'm interested in sweeps of homeless  
7 sites, and you have participated in that and there  
8 was testimony of course before, a few years ago?

9 MR. GANULIN: Objection. He  
10 didn't say he participated in homeless sweeps,  
11 which is the word you used.

12 MR. FELSON: Cleanup operation of  
13 homeless sites, so we don't mess anything up here.

14 MR. GANULIN: I'll make the same  
15 objection. He didn't say participated in  
16 operations. He said he saw a site, a homeless  
17 site.

18 MR. FELSON: Let's go off the  
19 record.

20 (Off the record discussion.)

21 BY MR. FELSON:

22 Q. Now, I'm going to ask, just to help me,  
23 you mentioned the word sweep as possibly having  
24 some other meaning or did I get that right?

25 A. I never mentioned sweep. You did.

1 Q. Does a sweep have any special meaning  
2 in your job?

3 A. None whatsoever.

4 Q. Okay. Now, I understand you've already  
5 testified that you had no particular recollection  
6 of October this or that and so on and what happened  
7 in a particular cleanup?

8 MR. STEVENSON: Jeff, I'm going to  
9 caution you again.

10 THE WITNESS: You're correct.

11 BY MR. FELSON:

12 Q. I'll go to the end of the question.  
13 And you gave some general answer, but specific  
14 recollection of something that happened all these  
15 years ago, I understand that you didn't have that.

16 Do you recall whether these  
17 cleanups would be instigated by -- ever instigated  
18 by a call from the Cincinnati police?

19 MR. GANULIN: Object to the  
20 question, but go ahead and answer it if you can.

21 THE WITNESS: I don't know.

22 BY MR. FELSON:

23 Q. All right. That's an answer. The term  
24 community service is used around here on occasion.  
25 What does that mean?

1           A.    The Court order's a probationer to do  
2           community service usually instead of incarceration  
3           as part of their punishment.

4           Q.    Do I have it correct that generally you  
5           would be bringing over probationers who are doing  
6           court-ordered community service?

7           A.    Uh-huh.

8                       MR. STEVENSON:   Yes or no?

9                       THE WITNESS:   Yes.

10          BY MR. FELSON:

11                Q.    You mentioned that you recall, at least  
12           on occasion, being in the van while this cleanup  
13           was taking place, correct?

14           A.    Correct.

15                Q.    And you also mentioned the vehicle was  
16           on the site?

17           A.    Correct.

18                Q.    Does that mean you would pull up over  
19           the curb?

20           A.    No, sir, you're on the roadway.

21                Q.    On the roadway?

22           A.    Yes, sir.

23                Q.    When you said on the side, you just  
24           meant close by?

25           A.    Within -- able to supervise the

1 probationers and visually see them.

2 Q. Visual contact you would have?

3 A. Yes.

4 Q. And close enough that if a question  
5 came up, you would be there?

6 A. Oh, absolutely.

7 Q. Now, you also mentioned that you would  
8 instruct the probationers to do what the officer  
9 said?

10 A. Yes.

11 Q. So presumably an officer would, for the  
12 most part of your recollection, would be around  
13 also?

14 A. They would be there, yes.

15 Q. And the officer would have his own  
16 vehicle; is that correct? Ordinarily?

17 A. Yes.

18 Q. In your experience, if you recall,  
19 would the officer stay in his vehicle or would he  
20 be up closer to the probationers, if you have any  
21 recollection?

22 A. I don't remember.

23 Q. Might be one might be true? You don't  
24 have a recollection?

25 A. It could be, yes. I have no

1 recollection.

2 Q. Have you ever -- do you recall any  
3 conversation you ever had with any probationer  
4 about cleanup operations -- I wouldn't use that  
5 word -- about the cleanup of these sites?

6 A. No, sir.

7 Q. And do you recall speaking with any  
8 county personnel back in the office about cleanup  
9 of sites and how it works?

10 A. No, sir.

11 Q. What I'm hearing is these are very  
12 routine operations, they don't excite a lot of  
13 conversation?

14 MR. GANULIN: Object to the  
15 question, but if you understand it.

16 MR. STEVENSON: If you understand  
17 it, go ahead and answer.

18 THE WITNESS: If we were directed  
19 to go there, we went there, we went to the site.

20 BY MR. FELSON:

21 Q. You don't recall these cleanups raising  
22 any questions that you had to ask somebody about?

23 A. No, sir, I don't remember.

24 Q. Okay. Would the same be true regarding  
25 city personnel? Let's say these police officers,

1 did you ever discuss with any police officer how  
2 you clean up or problems that arose or anything of  
3 that nature?

4 A. No, sir, not that I'm aware of.

5 Q. Okay. I'm going to ask -- I'm going to  
6 show you a couple of exhibits I have here, just so  
7 I can understand some of these, and we'll see if  
8 this is something you can help me with.

9 Plaintiff's Exhibit 1 I'm going to  
10 hand to you, and I've got a copy. Of course the  
11 attorneys have these from elsewhere, and I'll  
12 represent that I received these from the attorney  
13 for Hamilton County.

14 I just want to know what this is,  
15 who fills it out, if you can just tell me in  
16 general. There are probably two parts to it.  
17 Community service roster, is that what you call  
18 this first page? There are six, seven, maybe it's  
19 all the same, I'm sorry, 13 pages actually which  
20 look like the same form. Is that what you have  
21 there?

22 A. Yes, sir, it is.

23 Q. And the community service roster, what  
24 is this used for, this roster, if you know?

25 A. The roster of the probationers that are

1 to report for community service.

2 Q. Do you see these in the course of your  
3 duties?

4 A. Most of the time I do not.

5 Q. You don't see these.

6 A. I would be search -- at this time when  
7 this was taking place, I was searching the  
8 probationers in the morning. They go through the  
9 x-ray machine so they are not carrying anything  
10 illegal and they empty their pockets out.

11 Q. Who would generate this report?

12 A. At the time, I don't know who would  
13 have been doing it.

14 Q. So you would rarely, if ever, see this?

15 A. Seldom.

16 Q. What would be the occasion when you  
17 would see it?

18 A. I can't think of any honestly. You  
19 take your assignment and if you had a problem, you  
20 report it back to the boss and check on the  
21 paperwork. I seldom looked at these.

22 Q. You knew they were around?

23 A. I knew they were around, but I seldom,  
24 like I said, looked at them.

25 Q. Can I ask you in your general



1       experience, is this a way that probationers who put  
2       in time on community service were credited with  
3       that time?

4               A.    Yes.

5               Q.    And who would fill in the seven, seven,  
6       I assume those are hours?

7               A.    Right. I have no idea who was doing it  
8       at the time, but it's a random pick, it's whoever  
9       comes through the line. You're assigned to  
10       supervisors and your time would be marked down,  
11       seven hours according to that date, next to the  
12       name.

13              Q.    You can't tell from this where the  
14       person was putting in his time?

15              A.    No, sir.

16              Q.    Is there anywhere to tell where a  
17       probationer was putting in time, any form?

18              A.    Not that I'm aware of.

19              Q.    Okay. Now under notes you'll see  
20       something, the first person Marquita Abernathy, it  
21       says VOA?

22              A.    Volunteers of America.

23              Q.    What's that refer to?

24              A.    People under light duty would be  
25       assigned to those, usually a sit-down job, and I

1       don't know what they did. VOA, we call it light  
2       duty assignments.

3               Q. That would be somebody that was not  
4       supposed to go out and do heavier --

5               A. If they had a restriction, maybe  
6       lifting, maybe could have a heart problem.

7               Q. So it would be a medical --

8               A. Health issue, medical issue.

9               Q. Okay. And they would go to a -- there  
10       was a sit-down job of some kind, Volunteers of  
11       America?

12              A. I don't know if it was specifically  
13       sit-down. I know it was for light duty.

14              Q. Do you know what AWC is, about  
15       two-thirds of the way down?

16              A. Approach with caution.

17              Q. Really?

18              A. I shouldn't say that because I'm not  
19       sure.

20              Q. That's a note that somebody put on  
21       there?

22              A. It's printed on there. It's not  
23       handwritten, it's typed.

24              Q. Approach with caution, and yet the  
25       person was still out doing his probation?

1           A.    Yes, sir.

2           Q.    It sounds like a warning of some kind  
3           to whoever is supervising?

4           A.    It could be.   That's the first I saw it  
5           on this sheet.   I seldom saw these before.

6           Q.    So you would be out with somebody, you  
7           wouldn't know if there was an approach with caution  
8           note on there?

9           A.    I don't remember.

10          Q.    Okay.   On page four, I just -- I don't  
11          know whether any of these have any importance, but  
12          just for my own information at least, I see an EMU  
13          a couple of places.   Do you know what that means?

14          A.    Electric monitoring unit.

15                   MR. STEVENSON:   It's actually  
16          electronic.

17          BY MR. FELSON:

18          Q.    And that was the person that had  
19          something on his leg or something like that?

20          A.    Yes, sir.

21          Q.    Okay.   Let's go on to Number 2, and  
22          again, that's the original.   You can just leave  
23          that there, and let me see if I have one each  
24          marked and now here we have, oh, a community  
25          service roster.   The first page looks like the

1 others. Oh, clerical crew, what does that mean?

2 That's why I separated them. Any idea?

3 A. I'm assuming they'd be sent to the  
4 office to help file.

5 Q. The law library down here?

6 A. Yeah.

7 Q. For whatever reasons, these are people  
8 that are not out on a work crew; would you agree  
9 with that?

10 MR. STEVENSON: I'm going to  
11 object. You mean not outside on a work crew?

12 MR. FELSON: Maybe so, yeah.  
13 Well, the word clerical, I'm sure you know exactly.  
14 Why don't you tell me.

15 MR. STEVENSON: You know, Steve,  
16 my objection to this document is foundational with  
17 respect to him. If you know the answer to the  
18 question, Jeff, answer the question.

19 MR. FELSON: No, no, no. Let's  
20 move on. That's good enough for me.

21 BY MR. FELSON:

22 Q. Let's take a quick look at Number 3.  
23 Now, you should have something in front of you  
24 that's got handwritten 10-10-00, Tuesday, on it and  
25 community service program typewritten. Do you have

1       that?

2               A.   It's handwritten, it's not typed.

3               Q.   The date is handwritten, correct?

4               A.   Correct.

5               Q.   And it's captioned community service  
6 program, correct?

7               A.   Yes.

8               Q.   Now, it says weekday locations. Do you  
9 know this form at all?

10              A.   Again, I never did this part of the  
11 paperwork.

12              Q.   Okay. Have you seen this form before?

13              A.   Yes.

14              Q.   Do you know what it's for? Weekday  
15 locations, it says, but I'm just trying to get a  
16 handle on what it's about.

17              A.   Distribution, number of people going to  
18 each supervisor for community service.

19              Q.   Okay. Is your name on here? Is that  
20 you, JS, one of the JS's?

21              A.   Yes, it would have to be.

22              Q.   Okay. There's a second JS with a small  
23 S. Any idea what that was?

24              A.   Another supervisor with the same  
25 initials.

1           Q.    So these look like, across the top,  
2           initials of supervisors?

3           A.    Yes, sir.

4           Q.    And would this be, would this be some  
5           kind of a form that would tell somebody which  
6           probationers are going with which supervisor or do  
7           I have that wrong?

8           A.    Yes, sir.

9           Q.    That's correct?

10          A.    Yes, sir.

11          Q.    And you'll see on the third page, they  
12          are not paginated, but the third page says  
13          Wednesday it's got a different name. Under your  
14          initials, the first one had Morgan and Huffman or  
15          something like that, and suddenly we have second  
16          date, Terrance Woods. So that would be who you  
17          would be going out with on the second day, on the  
18          Wednesday?

19          A.    Who were the names again?

20                   MR. STEVENSON: Steve I'm going to  
21          object.

22                   MR. FELSON: Just one point. Let  
23          me get through this and we'll be done.

24          BY MR. FELSON:

25          Q.    This was not given to you to tell you

1       who you went out with.  Somebody else used this and  
2       assigned people to your crew; is that correct?

3               A.  I would get a list of the people.  
4       They'd write it out each day who you got.

5               Q.  But it wouldn't be on this form?

6               A.  No, sir.

7               Q.  It would be a blank piece of paper, and  
8       they'd tell you who you have, your people with you?

9               A.  Yes, sir.

10              MR. FELSON:  That's all I have.

11              MR. STEVENSON:  Jeff, I have just  
12       a couple of follow-up questions.

13                               CROSS EXAMINATION

14       BY MR. STEVENSON:

15              Q.  When you went to the homeless sites  
16       that Mr. Felson was talking to you about during the  
17       several times that you went to those, did you ever  
18       find people there?

19              A.  Yes.

20              Q.  All right.  When you found people  
21       there, were they given an opportunity to remove  
22       items of value?

23              A.  As far as I can remember.

24              Q.  Okay.  Now, during your employment as a  
25       community supervisor, community service supervisor,

1       were items of value ever brought to you?

2               A.   From the sweeps?

3               Q.   Not from the sweeps.   Ever?

4               A.   Oh, yes, yes, quite often actually.

5               Q.   What do you do with items of value that  
6       are brought to you?

7               A.   Let's say, for example, if it's in the  
8       city, in the District One region within their  
9       jurisdiction, you take it to the local district,  
10      the local municipality, whether it be Colerain  
11      Township, the jurisdiction, the Highway Patrol's  
12      jurisdiction.   You return it to their jurisdiction.

13              Q.   So this was not an infrequent  
14      occurrence that items of value would be brought to  
15      you?

16              A.   No.

17              Q.   All right.   When you went to the City  
18      of Cincinnati homeless sites, I believe you  
19      indicated that you sat in the van?

20              A.   As far as I can remember, yes, sir.

21              Q.   All right.   And the actual cleanup was  
22      going -- let's use the Fifth Street viaduct for an  
23      example -- the actual clean up is occurring at some  
24      location away from the van; is that correct?

25              A.   Yes, sir.



1 Q. And can you give us an estimate about  
2 how far away from the van this was happening?

3 A. 10, 12, 15 feet.

4 Q. Did you have any conversations with the  
5 police officer during the cleanup taking place?

6 A. Not that I recollect.

7 Q. Were you ever able to observe any  
8 conversations between the police officer and the  
9 probationers?

10 A. He would give them the directive. The  
11 police officer would give them directive on what  
12 needs to be done at the locations.

13 Q. All right. Were you ever -- strike  
14 that. When the cleanup was finished, what  
15 happened?

16 A. If it was the end of the day, we would  
17 bring the probationers back to the Justice Center  
18 and drop them off.

19 Q. Did the police officer stay at the  
20 location when you were done?

21 A. I don't remember.

22 Q. All right. Do you have any  
23 recollection of whether any of your probationers  
24 would have brought items of value to the police  
25 officer?

1 A. No, sir, I don't.

2 Q. Okay. Were you present and did you  
3 listen to instructions being given the probationers  
4 by the police officers?

5 A. I was present, but not always  
6 listening.

7 MR. STEVENSON: All right.  
8 Nothing else.

9 REDIRECT EXAMINATION

10 BY MR. GANULIN:

11 Q. One follow-up. You were sitting in a  
12 van you said 12, 15 feet away from where the clean  
13 up was occurring. Were the windows rolled down in  
14 your van in October?

15 A. I don't remember. I would probably  
16 have them down winter, spring, summer, or fall.

17 Q. But as you're testifying today, do you  
18 specifically remember Police Officer Branigan  
19 giving verbal orders to probationers?

20 A. At every site they would have to give  
21 them some sort of order, the policeman.

22 Q. Do you remember how long the cleanup  
23 took at that --

24 A. Absolutely not.

25 Q. But your testimony today, you can

1       remember now, do you remember what Police Officer  
2       Branigan said?

3               A.   No, sir, I told you that.

4               Q.   But you observed him speaking to the  
5       probationers?

6               A.   Yes.  They would have to have some sort  
7       of directive on what to do by the policeman.

8               Q.   Are you saying that perhaps he spoke to  
9       them once?

10              A.   I don't remember.

11              Q.   You don't know how many times he spoke  
12       to them?

13              A.   Not at all.

14              Q.   Are you basically assuming he spoke to  
15       them at least once?

16              A.   Yes.  He would have to give them a  
17       directive to do -- I always tell the probationers  
18       to do what the policeman tells them.

19              Q.   You directed them to go to the  
20       policeman --

21              A.   Usually we follow the policeman to the  
22       site and they would follow the directive of the  
23       police officer.

24              Q.   And do you recall specifically that's  
25       what occurred for this site beneath the Fifth

1 Street viaduct west of Central in October of 2001.

2 A. Do I specifically? No.

3 Q. Okay. That's fine. I thought that's  
4 what you were responding to Mr. Stevenson about.  
5 That's fine. Nothing else.

6 RECROSS EXAMINATION

7 BY MR. FELSON:

8 Q. I have one more item to ask here which  
9 we haven't really discussed. While these cleanups  
10 were taking place, there was hauling away of what  
11 was cleaned up, correct, in some fashion either  
12 after or during? What was the usual custom for  
13 getting the stuff, taking the stuff away, or did  
14 you have any connection with that?

15 A. There would be a truck there, whether  
16 it's pickup trucks, garbage trucks, and they would  
17 bag things and haul it away, toss it into the  
18 truck.

19 Q. Would they be waiting while the cleanup  
20 was taking place or called in afterwards, if you  
21 recall?

22 A. I don't remember.

23 Q. On occasion would you see a sanitation  
24 truck or a pickup truck while you were there?

25 A. Yes, there would have been, to haul the

1 stuff away.

2 Q. Theoretically they could wait until  
3 it's done and call them when it's done later. You  
4 recall them being there?

5 A. Yes.

6 Q. You mentioned bags. The probationers  
7 were supplied with large garbage bags?

8 A. Yes, sir.

9 Q. And that's what they used to throw  
10 things into?

11 A. Yes, sir.

12 Q. And they tie them up and put them down  
13 or haul them to the truck? Somebody would haul  
14 them to the truck?

15 A. The truck, yes.

16 Q. Would that be the probationers?

17 A. Yes.

18 Q. And you saw that happen on occasion,  
19 correct?

20 A. Yes.

21 MR. FELSON: Now you never saw --  
22 no, no, withdraw that. Okay, nothing further.

23 RECROSS EXAMINATION

24 BY MR. STEVENSON:

25 Q. I have one follow-up. Do your

1       probationers wear orange jumpsuits when they do  
2       this work?

3               A.   Absolutely not.

4                       MR. STEVENSON:   All right.   Okay.  
5       We're done.   We want signature.

6                       (Concluded at 10:01 a.m.)

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JEFFREY A. SMITH

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C E R T I F I C A T E

STATE OF OHIO

SS:

COUNTY OF MONTGOMERY

I, LISA K. KELLER, the undersigned, a Registered Reporter, Certified and Notary Public within and for the State of Ohio, do hereby certify that before the giving of aforesaid deposition said JEFFREY A. SMITH, was by me first duly sworn to state the truth, the whole truth, and nothing but the truth; that the foregoing is the deposition given at said time and place by said JEFFREY A. SMITH; that said deposition was taken in stenotypy by the court reporter and transcribed into typewriting under her supervision; that said transcribed deposition was submitted to the witness for his examination; the court reporter was neither a relative of nor attorney for any of the parties to this case nor relative of nor employee for any of the counsel; neither the court reporter nor the affiliated court reporting firm has a financial interest under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office this 16th day of June, 2006.

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LISA K. KELLER  
Notary Public, State of Ohio  
My Commission Expires 11-7-08

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